

No. 2013-1635, -1671

**United States Court of Appeals
For the Federal Circuit**

AVIVA SPORTS, INC.,

Plaintiff-Cross-Appellant,

v.

FINGERHUT DIRECT MARKETING, INC.,
MENARD, INC., and KMART CORPORATION,

Defendants,

And

MANLEY TOYS, LTD.
(doing business as Manley Toys, and ToyQuest),

Defendant-Appellant.

UNOPPOSED MOTION TO EXTEND TIME

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(612) 340-2600

Counsel for Plaintiff-Cross-Appellant

Pursuant to Rule 26(b) of the Rules of Practice of the United States Court of Appeals for the Federal Circuit, Plaintiff-Cross-Appellant Aviva Sports, Inc. (“Aviva”) moves to extend the deadline to file its principal and response brief by 10 days, from January 21 to, and including, January 31, 2014. Aviva has not previously requested any deadline extension in this matter. This motion is timely under Federal Circuit Rule 26(b)(1).

This motion is based on good cause as described in the following facts, which are not in dispute: Late on Friday, January 10, 2014, an unrelated matter on which Aviva’s counsel also serves as counsel became unexpectedly and urgently active. The activity includes emergency proceedings in multiple Minnesota state courts and coordination with multiple other interested parties. The unexpected activity in this unrelated matter requires Aviva’s counsel to prepare and file multiple briefs between now and January 21, the date on which Aviva’s brief is due to this Court. Aviva’s counsel has factual and legal knowledge unique to its representation of both Aviva and the pending matters before Minnesota state court. Moreover, Aviva’s counsel has made substantial progress in preparing its brief in the matter pending before this Court, which necessarily implicates the time-consuming development of an in-depth understanding of the factual and legal

issues involved in this matter. Substitution of other attorneys in either matter is not feasible at this stage of litigation.

In accordance with the Rules, Aviva has conferred with Defendant-Appellant Manley Toys, Ltd. (“Manley”) regarding this motion. Manley does not oppose this request for an extension and it will not file a response. This Court has previously granted a 14-day extension to Manley on an unopposed motion for an extension, permitting it additional time to prepare and submit its principal brief. (*See* Dkt. 22.)

For the foregoing reasons, Aviva respectfully requests that this Court grant this Unopposed Motion to Extend Time, extending the deadline for Aviva to file its principal and response brief by 10 days, from January 21 to, and including, January 31, 2014.

Dated: January 13, 2014

DORSEY & WHITNEY LLP

By s/ J. Thomas Vitt
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Counsel for Plaintiff-Cross-Appellant

CERTIFICATE OF INTEREST

Counsel for the Appellee/Cross-Appellant Aviva Sports, Inc. certifies the following

1. The full name of every party or amicus represented by me is:

Aviva Sports, Inc. now known as "ASI, Inc."

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

None

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

ASI, Inc. f/k/a Aviva Sports, Inc., ("Aviva") is a wholly-owned subsidiary of Shrco, Inc., f/k/a ShoreMaster, Inc. Shrco, Inc. is a wholly-owned subsidiary of Varistar Corporation, a Minnesota corporation that is wholly owned by Otter Tail Corporation. Otter Tail Corp. is publically traded on the NASDAQ Stock Market. Otter Tail Corporation owns 10% or more of Aviva's stock.

4. The names of all law firms and the partners or associates that appeared for the party or Amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Dorsey & Whitney LLP, J. Thomas Vitt, David Y. Trevor, Michael Weinbeck

Arthur, Chapman, Kettering, Smetek & Pikala, P.A., Keith M. Sorge, Blake W. Duerre, Paul E.D. Darsow, Ryan C. Sorge, Timothy J. Carrigan

1-13-14

Date

s/J. Thomas Vitt

Signature of counsel

J. Thomas Vitt

Printed name of counsel

Please Note: All questions must be answered

cc: Stephen Lobbin

CERTIFICATE OF SERVICE

I, Susan M. Giese, hereby certify that a copy of the foregoing “Motion to Extend Time” and supporting materials including the Certificate of Interest to be filed with the Clerk of the U.S. Court of Appeals for the Federal Circuit using the CM/ECF filing system which caused a copy to be electronically mailed to the following CM/ECF participant noted below:

Stephen M. Lobbin
The Eclipse Group
2020 Main Street, Suite 600
Irvine, CA 92101

Dated: January 13, 2014

s/Susan M. Giese
Susan M. Giese